11.08.2023
Item No.10
gd/ssd

MAT/1108/2023
IA NO: CAN/1/2023
ASHISH KUMAR KANODIA
VS
UNION OF INDIA AND ORS.

Mr. Himangshu Kumar Ray,
Mr. Paban Kumar Gupta,
Ms. Shiwani Shaw,
Mr. Amit Saha
..for the Appellant.

Mr. Soumen Bhattacharjee
..for the Union of India.

1. This intra court appeal is directed against the order passed by the learned Single Bench dated 7th June, 2023 in WPA 10063 of 2023.

2. The appellant had challenged the order passed by the respondent assessing officer under Section 148A(d) of the Income Tax Act, 1961 (for short "the Act"). The appellant was unsuccessful in this challenge resulting in the present appeal.

3. The learned counsel appearing for the appellant would vehemently contend that the very initiation of the reopening proceedings by issuance of notice under Section 148A(b) of the Act dated 21.03.2022 has initiated inasmuch as seven clear days time was not granted to the appellant/assessee to file his objection.

4. Nevertheless, the assessee within the two-day time payment granted had filed his objection.

However, the authority had passed the order under Section 148A(d) of the Act on 6th April, 2022 without taking note of the fact that adequate time has not been granted to the assessee and there is discrepancy in the dates on which the hearing was fixed. Under normal facts and circumstances the court would have considered as to the correctness of the submission made on behalf of the appellant to see as to whether there was any jurisdictional error in the decision making process rather than the decision. However, what precludes us from doing so is the conduct of the appellant/assessee. Admittedly, the order passed under Section 148A(d) of the Act on 6th April, 2022. Thereafter the department had issued notice under Section 143(2) of the Act on 15th March, 2023. The appellant had responded to the notice by the reply dated 16th March, 2023 and thereafter in April, 2023 the writ petition was filed. Thus, by the conduct of the assessee it is seen that the assessee was not prejudiced on account of the alleged non-providing of seven days' time to respond to the show cause notice dated 21.03.2022.

5. Therefore, we are not inclined to interdict the proceedings. However, we preserve the appellant's right to raise all contentions before the authority in response to the notice issued under Section 143(2) of the Act dated 15th March, 2023.

6. The appellant is granted ten days' time to file an additional reply to the said notice issued under Section 143(2) of the Act dated 15$^{th}$ March, 2023 and the appellant is directed to enclose the bank statement and on receipt of the reply, the assessing authority shall verify all the details and take a decision in accordance with law.

7. With the above observation, the appeal stands disposed of.

**(T. S. SIVAGNANAM)**
**CHIEF JUSTICE**

**(HIRANMAY BHATTACHARYYA, J.)**